

INTERLOCAL AGREEMENT

SOUND TRANSIT AND THE CITY OF EDMONDS

THIS AGREEMENT is made and entered into by and between the undersigned parties pursuant to the provisions of the Interlocal Cooperation Act of 1967, Chapter 39.34 RCW.

WHEREAS, the City of Edmonds, Washington is an optional municipal code city (hereinafter "City") organized under the provisions of Title 35A RCW and owns, operates and manages certain rights of way and real property on the Edmonds waterfront; and

WHEREAS, the Central Puget Sound Regional Transit Authority (hereinafter "Sound Transit") is a regional transit authority created pursuant to Chapters 81.104 and 81.112 RCW, with all powers necessary to implement a high capacity transportation system within its boundaries in King, Pierce and Snohomish Counties, including the right to construct and maintain facilities and public rights of way without a franchise (RCW 81.112.100 and 35.58.030); and

WHEREAS, pursuant to a contemporaneously approved Development Agreement, the City and Sound Transit have provided for the development of certain real property, known as the Edmonds Station Project, as that Project is depicted in said agreement incorporated by reference herein set forth; and

WHEREAS, pursuant to the authorization of the Interlocal Cooperation Act, the City grants to Sound Transit nonexclusive use of portions of Railroad Street in the City as described herein in consideration of Sound Transit's promises regarding the ownership, operation and maintenance of the Project in the right of way as herein provided, NOW, THEREFORE,

In consideration of the mutual promises and covenants contained herein, it is agreed that:

Section 1. Duration. This Agreement shall have an indefinite term and shall remain in full force and effect unless or until Sound Transit ceases to use the right of way granted pursuant to Section 3 below for public transportation purposes authorized under the provisions of Chapters 81.104 and/or 81.112 RCW.

Section 2. Purpose. This Agreement provides a grant of authorization to Sound Transit for the non-exclusive use of certain right of way described in Section 3 under the terms and conditions set forth herein.

Section 3. Grant for Use of City Right of Way.

3.1 The City hereby grants to Sound Transit, its successors and assigns, a non-exclusive use of portions of Railroad Street, the general location of which is described and depicted on Exhibit "A" attached and incorporated herein, to construct, operate, maintain, and own the Project in accordance with the terms and conditions of this Agreement. The portions of the Project located in Railroad Street shall be limited to the areas shown in Exhibit "A". The City's Public Works Director and Sound Transit's Director of Capital Project may, from time to time, jointly revise and modify Exhibit "A" to conform to the record drawings, so as long as the revisions are, in their professional engineering judgment, within the scope and intent of Exhibit "A". Sound Transit expressly agrees that it will construct, operate and maintain the Project in compliance with this Agreement and all applicable City ordinances and state and federal laws.

3.2 Unless otherwise provided in this Agreement, Sound Transit shall own, operate and/or maintain all facilities associated with the Project, including those within the City right of way, including, without limitation, improvements constructed at the cost and expense of Sound Transit. The parties acknowledge that Community Transit may own, operate and maintain certain elements of the facilities described in Section 2.1 of the Development Agreement and that subsequent amendments to this Agreement may be necessary to address this possibility. Sound Transit will keep the City informed of the progress of discussions with Community Transit and work cooperatively with the City to address ownership, operation and maintenance of all facilities in a mutually agreeable manner. Nothing in this Agreement, however, shall be construed as granting to Sound Transit any interest or right in the City right of way or the improvements on the City's right of way other than the rights expressly provided herein.

3.3 The City recognizes that the Project is a public transportation improvement and as such will cooperate with Sound Transit by directing conflicting non-City, private utilities to relocate when necessary at their expense, as provided by law. Sound Transit agrees that it will coordinate with all utilities to minimize utility relocation costs and related construction, and will negotiate with non-City owned utilities on relocation costs and cost allocation. Sound Transit shall fully indemnify the City for any claim and undertake the defense of any litigation directed at the City arising from such relocation to accommodate the construction of the Project. The City shall cooperate with Sound Transit in the defense of any such claim. Notwithstanding the foregoing, the Parties agree that Sound Transit shall pay for any relocation or protection of City-owned utilities that the City determines is necessary due to construction or operation of the Project and as required by City Code.

3.5 Sound Transit, at Sound Transit's sole cost and expense, shall furnish all materials, parts, components, equipment and structures necessary to construct and operate the Project, or any part thereof, in accordance with this Agreement. Any and all work by Sound Transit shall be done in a good and workmanlike manner, in conformity with all applicable engineering, safety, and other statutes, laws, ordinances,

regulations, rules, codes, orders, or specifications of any public body or authority having jurisdiction.

3.6 Sound Transit's design and construction of the Project is subject to a financial assistance contract between Sound Transit and the Federal Transit Administration ("FTA"). Both Parties recognize that the FTA may request a change to this Agreement to comply with its funding requirements. The Parties agree to consider any such request in good faith.

3.7 The Parties acknowledge that a portion of the Project will be constructed upon real property that Sound Transit will lease from the Burlington Northern and Santa Fe Railway Company ("BNSF") and that this real property is presently encumbered by an easement granted to the City in 1958. In order to meet Federal Transit Administration ("FTA") continuing control requirements, it is anticipated that Sound Transit, the City and BNSF will in the future enter into a subordination agreement that will be separate and apart from this Agreement. Approval of the subordination agreement by Sound Transit and the City shall not be unreasonably withheld.

Section 4. Permits.

4.1 Sound Transit, at its sole cost and expense, shall (i) secure and maintain in effect, all federal, state and local permits and licenses required for the construction, operation and maintenance of the Commuter Rail Transit System, including, without limitation, crossing, zoning, building, health, environmental, and communication permits and licenses, and (ii) indemnify the City against payment of the costs thereof and against any fines or penalties that may be levied for failure to procure, or to comply with, such permits or licenses, as well as any remedial costs incurred by the City in curing any such failures.

4.2 The City shall not hinder Sound Transit's attempts to secure, obtain, and maintain, at Sound Transit's sole cost and expense, any permits, licenses or approvals of other governmental agencies or authorities, or of any necessary Third Parties, for the use of any structures or facilities (including streets, roads or utility poles).

4.3 Sound Transit shall operate, maintain, and repair the Project in compliance with all federal, state, and local laws, ordinances, departmental rules and regulations and practices affecting such system, which includes, by way of example and not limitation, the obligation to operate, maintain, and repair in accordance with the applicable provisions of City Code. In addition, the operation, maintenance, and repair shall be performed in a manner consistent with industry standards. Sound Transit shall exercise reasonable care in the performance of all its activities and shall use industry accepted methods and devices for preventing failures and accidents that are likely to cause damage, injury, or nuisance to the public or to property.

4.4 The City shall have no responsibility for inspecting, maintaining, servicing or repairing any trains or other equipment used by Sound Transit as part of the Project,

but all such equipment shall at all times comply with applicable federal, state, and local governmental requirements.

Section 5. Indemnity and Hold Harmless.

To the extent permitted by law, each of the Parties to this agreement shall protect, defend, indemnify, and save harmless the other Party, and its officers, officials, employees, and agents, while acting within the scope of their employment, from any and all costs, claims, demands, judgment, damages or liability of any kind including injuries to persons or damages to property, which arise out of, or in any way result from, or are connected to, or are due to any negligent acts or omissions of the indemnifying Party. No Party will be required to indemnify, defend, or save harmless the other Party if the claim, suit, or action for injuries, death, or damages is caused by the sole negligence of the Party seeking indemnification. Where such claims, suits, or actions result from concurrent negligence of the Parties, the indemnity provisions provided herein shall be valid and enforceable only to the extent of the Party's own negligence. Each of the Parties agrees that its obligations under this subparagraph extend to any claim, demand, and/or cause of action brought by, or on behalf of, any of its employees or agents. For this purpose, each of the Parties, by mutual negotiation, hereby waives, with respect to the other Party only, any immunity that would otherwise be available against such claims under the industrial insurance provisions of Title 51 RCW. In the event of any claims, demands, actions and lawsuits, the indemnifying Party upon prompt notice from the other Party shall assume all costs of defense thereof, including legal fees incurred by the other parties, and of all resulting judgments that may be obtained against the other Party. In the event that any Party incurs attorney fees, costs or other legal expenses to enforce the provisions of this section, all such fees, costs and expenses shall be recoverable by the prevailing Party. This indemnification section shall survive the termination of this Agreement.

Section 6. Insurance.

6.1 Sound Transit shall maintain, throughout the term of this Agreement and for six years after its termination, insurance adequate to protect the City against claims that may arise as a result of the construction, operation, or maintenance of the Project, including, without limitation: (i) comprehensive general liability insurance; (ii) property damage liability insurance (including coverage for explosion, collapse, and instability); (iii) workers' compensation insurance (to the extent required by law); (iv) employer's liability insurance; and (v) comprehensive auto liability coverage (including owned, hired, and non-owned vehicles).

6.2 Sound Transit shall carry such insurance with responsible insurers or self-insure or participate in an insurance pool or pools at levels of coverage or with reserves adequate, in the reasonable judgment of Sound Transit, to protect Sound Transit and the City against loss, and as are ordinarily carried by municipal or privately owned entities engaged in the operation of similar systems.

6.3 Sound Transit shall file with the City's Risk Manager Certificates of Insurance reflecting evidence of the required insurance and naming the City as an additional insured where appropriate. The certificates shall contain a provision that coverage shall not be canceled until at least 30 days' prior written notice has been given to the City.

6.4 If Sound Transit fails to maintain the required insurance, the City may order Sound Transit to stop operating the Project in Railroad Street until the required insurance is obtained.

Section 7. Liens.

7.1 The Project is not subject to a claim of lien. In the event that any City property becomes subject to any claims for mechanics', artisans' or materialmen's liens, or other encumbrances chargeable to or through Sound Transit that Sound Transit does not contest in good faith, Sound Transit shall promptly, and in any event within thirty (30) days, cause such lien claim or encumbrance to be discharged or released of record (by payment, posting of bond, court deposit or other means), without cost to the City, and shall indemnify the City against all costs and expenses (including attorneys' fees) incurred in discharging and releasing such claim of lien or encumbrance. If any such claim or encumbrance is not so discharged and released, the City may pay or secure the release or discharge thereof at the expense of Sound Transit after first giving Sound Transit seven (7) days advance notice of its intention to do so. The City shall use its reasonable best efforts to keep Sound Transit's facilities free of all liens that may adversely affect the Project.

7.2 Nothing herein shall preclude Sound Transit's or the City's contest of a claim for lien or other encumbrance chargeable to or through Sound Transit or the City, or of a contract or action upon which the same arose.

7.3 Nothing in this Agreement shall be deemed to give, and the City hereby expressly waives, any claim of ownership in and to any part or the whole of the Project except as may be otherwise provided herein.

Section 8. Terms Required by RCW 39.34.030 and RCW 39.34.040

In addition to the provisions previously stated regarding duration, organization and purpose, the following provisions are included pursuant to the requirements of RCW 39.34.030.

8.1 No joint or cooperative undertaking is required by this Agreement. Therefore, no provision is made for the financing of any joint or cooperative undertaking.

8.2 No joint property ownership is contemplated under the terms of this provision. To the extent title to the right of way exists, it shall remain in the City of Edmonds and all rights derived by Sound Transit for the use of the described property are derivative of the

City's ownership. In the event, at the termination of this Agreement, any personal property is jointly owned by the Parties, either Party may purchase the interest of the other, with the other Party's permission, at fair market value, as such value is determined by the parties. In the event that neither party wishes to retain jointly obtained property, it shall be surplussed and the proceeds divided pro-rata based upon the party's initial contribution to the purchase of such property. If both Parties seek ownership of the property, value shall be determined as herein provided and the right of the parties to purchase the property or properties determined by the drawing of lots.

8.3 Because no joint or cooperative undertaking is contemplated by this agreement, no provision has been made for an administrator or joint board.

8.4 This Agreement shall be effective when listed by subject on the City of Edmonds' web site, Sound Transit's web site or another electronically retrievable public source, whichever shall first occur.

Section 9. Covenants and Warranties.

9.1 By execution of this Agreement, the City warrants:

(a) That the City has the full right and authority to enter into and perform this Agreement and any permits that may be granted in accordance with the terms hereof, and that by entering into or performing this Agreement the City is not in violation of its charter or by-laws, or any law, regulation or agreement by which it is bound or to which it is bound or to which it is subject; and

(b) That the execution, delivery and performance of this Agreement by the City has been duly authorized by all requisite corporate action, that the signatories for the City hereto are authorized to sign this Agreement, and that, upon approval by the City, the joinder or consent of any other party, including a court or trustee or referee, is not necessary to make valid and effective the execution, delivery and performance of this Agreement.

9.2 By execution of this Agreement, Sound Transit warrants:

(a) That Sound Transit has full right and authority to enter into and perform this Agreement in accordance with the terms hereof, and by entering into or performing under this Agreement, Sound Transit is not in violation of any of its agency governance rules, or any law, regulation or agreement by which it is bound or to which it is subject; and

(b) That the execution, delivery and performance of this Agreement by Sound Transit has been duly authorized by all requisite Board action, that the signatories for Sound Transit hereto are authorized to sign this Agreement, and that the joinder or consent of any other party, including a court or trustee or referee, is not necessary to make valid and effective the execution, delivery and performance of this Agreement.

Section 10. Assignability; Beneficiary.

10.1 This Agreement shall be binding upon and inure to the benefit of the Parties hereto and their respective successors or assignees. No assignment hereof or sublease shall be valid for any purpose without the prior written consent of the other party, and any attempt by one party to assign or license the rights or obligations hereunder without prior written consent will give the other party the right, at its written election, immediately to terminate this Agreement or take any other lesser action with respect thereto. The above requirement for consent shall not apply to (i) any disposition of all or substantially all of the assets of a party, (ii) any governmental entity merger, consolidation, or reorganization, whether voluntary or involuntary, (iii) a sublease or assignment of this Agreement (in whole or in part) to a governmental entity, or (iv) a sale, lease, or other conveyance subject to those requirements set forth in this Agreement; provided, however, that no sublease or assignment under (ii) or (iii) shall be permitted to a governmental entity not operating, constructing or maintaining the Edmonds Station Project on behalf of Sound Transit, and provided further that no unconsented assignment shall relieve Sound Transit of its obligations and liabilities under this Agreement.

10.2 Neither this Agreement nor any term or provision hereof, or any inclusion by reference, shall be construed as being for the benefit of any party not a signatory hereto.

Section 11. Designated Representatives.

11.1 To promote effective intergovernmental cooperation and efficiencies, the Parties each designate a representative ("Designated Representative") who shall be responsible for coordination of communications between the Parties and shall act as the point of contact for each party. The Designated Representatives shall be responsible for the performance of the objectives of this Agreement.

11.2 Each Designated Representative is also responsible for coordinating the input and work of its agency, consultants, and staff as it relates to the objectives of this Agreement. The Parties reserve the right to change Designated Representatives, by written notice to the other party during the term of this Agreement. Each party's Designated Representative is named below with the individual's contact information.

Sound Transit

Jodi Mitchell
Sound Transit
401 South Jackson
Seattle, Washington 98104-2826
206-398-5117

City of Edmonds

Stephen Clifton
City of Edmonds
121 5th Avenue North
Edmonds, WA 98020
(425) 771-0251

Section 12. Default.

12.1 No Party shall be in default under this Agreement unless it has failed to perform under this Agreement for a period of thirty (30) calendar days after written notice of default from any other Party. Each notice of default shall specify the nature of the alleged default and the manner in which the default may be cured satisfactorily. If the nature of the alleged default is such that it cannot be reasonably cured within the thirty (30) day period, then commencement of the cure within such time period and the diligent prosecution to completion of the cure shall be deemed a cure. Any Party not in default under this Agreement shall have all rights and remedies provided by law including without limitation damages, specific performance or writs to compel performance or require action consistent with this Agreement. The prevailing party (or the substantially prevailing party if no one party prevails entirely) shall be entitled to reasonable attorneys' fees and costs.

Section 13. Notice.

13.1 Unless otherwise provided herein, all notices and communications concerning this Agreement shall be in writing and addressed as follows. Notice by hand delivery or facsimile shall be effective upon receipt. If deposited in the mail, notice shall be deemed delivered 48 hours after deposited. Any Party at any time by written notice to the other party may designate a different address or person to which such notice or communication shall be given.

If to the City:

City of Edmonds
121 5th Avenue North
Edmonds, WA 98020
(425) 771-0251
Attn: Stephen Clifton

If to Sound Transit:

Central Puget Sound Regional Transit Authority
Union Station
401 S. Jackson St.
Seattle, WA 98104-2826
Attn: Chief Executive Officer

13.2 Unless otherwise provided herein, notices shall be sent by registered or certified U.S. Mail, or other verifiable physical or electronic transmission, and shall be deemed served or delivered to addressee, upon the date of actual receipt, return receipt

acknowledgment, provided, however, that upon receipt of a returned notice marked "unclaimed," the sending Party shall make a reasonable effort to contact and notify the other party by telephone.

Section 14.0 Dispute Resolution.

14.1 Any disputes or questions of interpretation of this Agreement that may arise between Sound Transit and the City shall be governed under the Dispute Resolution provisions in this Section. The Parties agree that cooperation and communication are essential to resolving issues efficiently. The Parties agree to exercise their best efforts to resolve any disputes that may arise through this dispute resolution process, rather than in the media or through other external means.

14.2 The Parties agree to use their best efforts to prevent and resolve potential sources of conflict at the lowest level.

14.3 The Parties agree to use their best efforts to resolve disputes arising out of or related to this Agreement using good faith negotiations by engaging in the following dispute escalation process should any such disputes arise:

(a) Level One - Sound Transit's Designated Representative and the City's Designated Representative shall meet to discuss and attempt to resolve the dispute in a timely manner. If they cannot resolve the dispute within fourteen (14) calendar days after referral of the dispute to Level One, either Party may refer the dispute to Level Two.

(b) Level Two - Sound Transit and City designees shall meet to discuss and attempt to resolve the dispute, in a timely manner. If they cannot resolve the dispute within fourteen (14) business days after referral of that dispute to Level Two, either party may refer the dispute to Level Three.

(c) Level Three - Sound Transit and City designees shall meet to discuss and attempt to resolve the dispute in a timely manner.

14.4 Except as otherwise specified in this Agreement, in the event the dispute is not resolved at Level Three within fourteen (14) calendar days after referral of that dispute to Level Three, the Parties are free to file suit or agree to alternative dispute resolution methods such as mediation. At all times prior to resolution of the dispute, the Parties shall continue to perform and make any required payments under this Agreement in the same manner and under the same terms as existed prior to the dispute.

Section 15. General Provisions.

15.1 The Parties shall not unreasonably withhold requests for information, approvals or consents provided for in this Agreement. The Parties agree to take further actions and execute further documents, either jointly or within their respective powers and authority, to implement the intent of this Agreement. The City and Sound Transit agree to work

cooperatively with each other to achieve the mutually agreeable goals as set forth in this Agreement.

15.2 This Agreement shall be interpreted, construed and enforced in accordance with the laws of the State of Washington. Venue for any action under this Agreement shall be Snohomish County, Washington.

15.3 This Agreement shall be binding upon and inure to the benefit of the successors and assigns of the City and Sound Transit.

15.4 A Memorandum of this Agreement shall be recorded at Sound Transit's sole cost and expense in the records of Snohomish County Washington.

15.5 Time is of the essence in every provision of this Agreement. Unless otherwise set forth in this Agreement, the reference to "days" shall mean calendar days. If any time for action occurs on a weekend or legal holiday, then the time period shall be extended automatically to the next business day.

15.6 This Agreement is made and entered into for the sole protection and benefit of the Parties hereto and their successors and assigns. No other person shall have any right of action based upon any provision of this Agreement.

15.7 This Agreement has been reviewed and revised by legal counsel for all parties and no presumption or rule that ambiguity shall be construed against the party drafting the document shall apply to the interpretation or enforcement of this Agreement. The Parties intend this Agreement to be interpreted to the full extent authorized by applicable law.

15.8 Each Party shall be responsible for its own costs, including legal fees, incurred in negotiating or finalizing this Agreement, unless otherwise agreed in writing by the Parties.

15.9 The Parties shall not be deemed in default with provisions of this Agreement where performance was rendered impossible by war or riots, civil disturbances, floods or other natural catastrophes beyond its control; the unforeseeable unavailability of labor or materials; or labor stoppages or slow downs, or power outages exceeding back-up power supplies. This Agreement shall not be revoked or a party penalized for such noncompliance, provided that such party takes immediate and diligent steps to bring itself back into compliance and to comply as soon as practicable under the circumstances without unduly endangering the health, safety, and integrity of both parties' employees or property, or the health, safety, and integrity of the public, Public Right-of-Way, public property, or private property.

15.10 This Agreement may be amended only by a written instrument executed by each of the Parties hereto. No failure to exercise and no delay in exercising, on the part of any party hereto, any rights, power or privilege hereunder shall operate as a waiver hereof, except as expressly provided herein.

15.11 This Agreement constitutes the entire agreement of the Parties with respect to the subject matters hereof, and supersedes any and all prior negotiations (oral and written), understandings and agreements with respect hereto.

15.12 Section headings are intended as information only, and shall not be construed with the substance of the section they caption.

15.13 In construction of this Agreement, words used in the singular shall include the plural and the plural the singular, and "or" is used in the inclusive sense, in all cases where such meanings would be appropriate.

15.14 This Agreement may be executed in several counterparts, each of which shall be deemed an original, and all counterparts together shall constitute but one and the same instrument.

Section 16. Severability.

16.1 In case any term of this Agreement shall be held invalid, illegal or unenforceable in whole or in part, neither the validity of the remaining part of such term nor the validity of the remaining terms of this Agreement shall in any way be affected thereby.

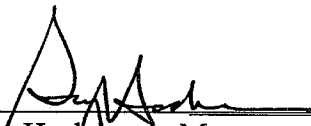
IN WITNESS WHEREOF, each of the Parties hereto has executed this Agreement by having its authorized representative affix his/her name in the appropriate space below:

**CENTRAL PUGET REGIONAL TRANSIT
AUTHORITY (SOUND TRANSIT)**

By: 
Joan M. Earl, Chief Executive Officer

Date: 2/9/10

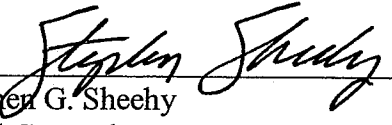
THE CITY OF EDMONDS

By: 
Gary Haakenson, Mayor

Date: 01/12/2010

Authorized on 01/05/2010

Approved as to form:

By: 
Stephen G. Sheehy
Legal Counsel

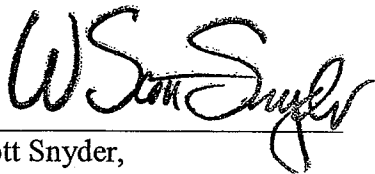
By: 
W. Scott Snyder,
City Attorney

EXHIBIT A

Project Plan

**Edmonds Station**
Overall Site Plan



